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June 19, 2019

VIA ELECTRONIC MAIL AND USPS

James E.T. Koshiba, Esq.
Jonathan E. Spiker, Esq.
Koshiba Price & Gruebner
707 Richards Street, Suite 610
Honolulu, Hawaii 96813

Re: Kline Welsh Behavioral Health Foundation

Dear Mr. Spiker:

I am writing in response to the email you sent Elizabeth Korsmo on May 31, 2019 regarding the above-named organization. Unfortunately, after reviewing this matter, it appears that Kline Welsh Behavioral Health Foundation did not timely comply with the terms which were either agreed upon, or represented as voluntary actions being taken by the organization and which are incorporated into the overall agreement, nor does it appear that the organization understands the reason for these terms.

Your letter of March 13, 2017, indicated that a number of elements would be dealt with to remedy some of the multiple issues identified in the December 2016 report of Management Search & Consulting, Inc., which was commissioned by the organization. Specifically, your letter proposed a change in Executive Officer and Executive Director Salary, an increase of the number and independence of the board of directors as well as term limits, the development of a succession plan, and finally the claw back provision.

We considered these items to be a compromise with our office meant to address the following issues: (1) the organization's payment of excessive officer and director compensation; (2) the apparent lack of oversight provided by the board; and (3) the apparent conflict some members of the board exhibited between their loyalty to the organization as part of their fiduciary duties, and their loyalty and reliance upon Mr. Henderson. These problems were identified within the report from Management Search & Consulting, Inc.

As noted, the discussions between you and my former colleagues, Mr. Jones, and Ms. Nakamura, appear to have resulted in your March 13, 2017 proposal in order to satisfy the Department. One of the most significant of these were that Mr. Henderson's salary was to be aligned with the amount proposed within the report of \$168,000 as base pay; bonus opportunity of up to 35% of the base and a cap on compensation at \$226,800. It must be noted here, that the numbers provided by the consultant were based upon the fact that Mr. Henderson "*were to be resident in Hawaii for the entire work-year.*" Nevertheless, it appears that my former colleagues chose to exercise a light hand, and did not place that condition upon the amount of executive salary.

Despite the lenience shown by our Office, no plan of succession was presented until recently on June 6, 2019, and Mr. Henderson's pay went above the cap proposed while on the board's watch. Whether or not he paid back the difference does not change the fact that the system in place allowed Mr. Henderson to be paid more than was agreed to by the Attorney General.

The single most telling point in the behavior of the organization is that, despite assurances in March of 2017, which described the claw back provisions of the arrangement, no money is represented as having been paid back by Mr. Henderson until *the day after receipt* of our letter dated May 3, 2019. The explanation in your letter of May 21, 2019 is that "...he always intended to pay but got distracted."

Whether or not Mr. Henderson became "distracted" is less important than the fact that the board did not follow up to ensure that the items proposed by the organization and agreed upon by the Hawaii Department of the Attorney General, were carried out as represented. The described matters were not dealt with for nearly two years and not until the Department of the Attorney General sent two letters requesting the information.

It is not clear to us whether this is due to the board's lack of understanding of its duties, or if it simply did not take the agreement with our office seriously. Either way, this is not acceptable to us.

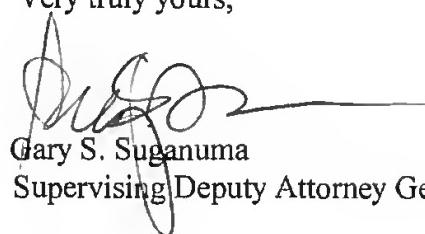
It is highly encouraged that the board reacquaint themselves with the Management Search & Consulting, Inc. report it commissioned, the laws which apply to the organization, the duties it owes as board members, and the penalties which may be levied against the organization for violations of law.

Please be advised that this letter constitutes a memorialization of the original agreement between the organization and our office as evidenced by your March 13, 2017 letter and our offices response dated March 30, 2017. For the reasons noted above, we do not believe that your client fulfilled the agreement in a good faith and timely manner. As such, we intend to closely monitor the organization and the board's activities for compliance with all of the terms of the original agreement in addition to the laws that apply to it including but not limited to the

Solicitation of Funds from the Public Act at Hawaii Revised Statutes (HRS) 467B-1 *et seq.*, the Hawaii Non-Profit Corporations Act at HRS 414D and any relevant common law.

Please also be advised that our office will approach any future corrective action with an appropriately increased level of enforcement, including formal legal action.

Very truly yours,

A handwritten signature in black ink, appearing to read "GARY S. SAGANUMA".

Gary S. Saganuma
Supervising Deputy Attorney General